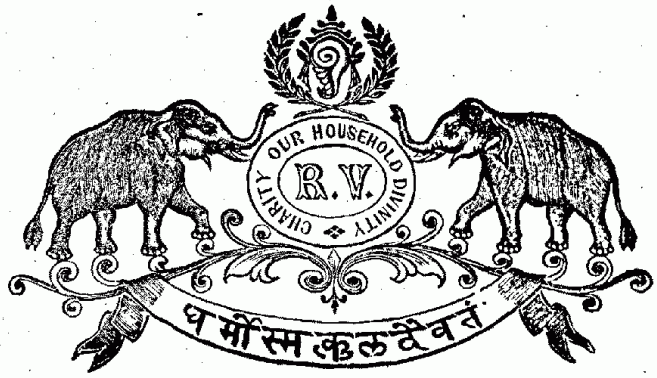
TRAVANCORE GOVERNMENT GAZETTE, SUPPLEMENT.

TUESDAY 7th July 1896.



Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 1 P. M. on Saturday the 27th June 1896. / 15th Ani 1071.

PRESENT.

The Dewan ... ... *Presiding.*

M. R. Ry. K. Krishnaswamy Rao Avergal, Dewan Bahadur., F. M. U.

M. R. Ry. V. Nagam Aiya Avergal, B. A., F. R. H. S.

M. R. Ry. P. Thanu Pillai Avergal, M. A.

Mr. O. H. Bensley, B. A.

Mr. I. H. Prince.

M. R. Ry. Rama Vurma Avergal, F. M. U., Rajah of Perapanad.

M. R. Ry. R. Ramanatha Rao Avergal.

GENERAL CLAUSES BILL.

Mr. Thanu Pillai.—Before addressing ourselves to the Penal Code, I would, with the permission of the President, make a small motion in regard to the General Clauses Bill. The Bill has been referred to a Select Committee composed of Messrs. Krishnaswamy Rao, Muthunayagom Pillai and the mover. Now that Mr. Muthunayagom Pillai has left the Council, I would move that Mr. Ramanatha Rao be put on the Committee in his place.

Seconded by Mr. Krishnaswamy Rao.

Carried.

PENAL CODE BILL.

Section 119.

As resolved at the last meeting the consideration of this and the connected sections was resumed and the Council having agreed to their retention, Mr. Thanu Pillai moved.—Insert the words 'in British India or' between 'depredation' and 'on' in the 2nd line. I have very slightly modified the amendment I proposed the other day. The amendment is intended to supply a mere omission. As the section now stands certain acts committed against a Native State are made offences without a corresponding provision for such acts in relation to British India.

Seconded by Mr. Krishnaswamy Rao.

Carried.

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Section 147.

Mr. Thanu Pillai.—The next amendment on the paper is also mine. It relates to section 147. The section in the Bill is exactly how it stands in the British Code. I would ask the careful attention of the Council to the wording :—"Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same." The owner or occupier, why—even a person claiming any interest, is made criminally liable not only for his own wilful and negligent acts but also for such acts of 'the agent or manager,' and the liability is apparently absolute—I mean, irrespective of any consideration as to whether the principal had any cognizance of the agent's acts or not. I believe no man can be held criminally responsible for the acts committed by another unless the former has had the opportunity or means of shaping or controlling those acts. Considerations of benefit, interest &c. are, I take it, merely *evidentiary* of such a connection, so far as the delinquency of the agents is concerned. Cases may be easily conceived in which a riot on a particular estate may be furthered by the agent in charge, perhaps for his own illicit gain, without the remotest knowledge on the part of the owner; and even under circumstances where if the principal had intimation he would have checked the conduct of the agent. It may often happen that the agent or manager takes every precaution to prevent any information reaching the principal. No landlord or respectable landowner is safe. He may be brought into trouble any moment by a mischievous or corrupt agent colluding with the rioters. It is, I believe, a recognized principle of law that the agent's wrongful act does not affect the principal "unless it is shown that the principal directed the agent so to act, or really meant he should so act, or afterwards ratified the illegal act....." I need not, I think, dwell on this point further. I would move that the words 'or his agent or manager' in line 6, the word 'respectively' in line 8 and the words 'or their' in line 9 be omitted. The principal's liability for his personal guilt is left intact and as for the manager and agent there is a separate section (148) providing for their punishment.

Mr. Rama Varma.—I second it. According to the section, I see, for the acts of the agent the principal is made to suffer criminally.

Mr. Krishnaswamy Rao.—This is evidently one of those sections intended to put down riots.

Carried.

Section 164.

Mr. Krishnaswamy Rao.—I beg to move that the words "or assists any other person to commit sexual intercourse with such woman" be inserted between "woman" and "if" in the fifth line. This amendment is necessary to meet the cases in which the public servant assists other persons (public servant or not) to commit sexual intercourse with the woman in his charge or under his control. A doubt having been felt as to whether the provisions of the Abetment Chapter will meet such a case, I have thought it proper to propose this amendment to make the matter clear.

Seconded by Mr. Prince.

Carried.

Section 129.

President.—We have gone through the amendments on the notice paper; but before finally closing the discussion on this important Bill I think it desirable to go over the main amendments which have been made to the provisions as they stand in the British Penal Code. Some of the modifications and additions seem to require the careful attention of the Council. Their importance fully justifies such a course. Now with regard to section 129 and others connected with harbouring, viz., 207, 211 and 212. The exemption from punishment is extended to father, mother, brother, sister, son or daughter of the offender. The British Code confines this to the husband

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and wife. I am afraid this is too wide a circle and it might interfere with the course of justice. I find in the Penal Code Bill as originally framed by the Commissioners the exemption is extended to a much larger number—all relations in the direct ascending or descending line &c. This, we see, has not been adopted. So far as the husband and wife are concerned the protection is natural and even necessary in view of their peculiar relationship and mutual obligations creating identity of interest—especially in India. What is there to prevent us from taking in brother's wife, son's wife &c. In harbouring they may be simply obeying the behests of their husbands and consulting the latter's interests. Their close relationship does not admit of independent action in such cases. I fear the exemption is carried too far.

Mr. Rama Vurma.—I quite agree with the President. It might, one would think, be extended even to intimate friends and I consider the exemption should apply to maternal uncles also, especially so far as Marumakkathayom families are concerned.

Mr. Prince.—The exemption is, I believe, based on considerations of natural affection. The question is whether mere sentiment should give way to law. Which is the higher duty, the affection which a man owes to his son or a son to his father *or* his duty to Government as a subject and citizen? Justice is likely to be often retarded, if not defeated. I admit the force of the President's remarks and would move that the words father, mother, brother, sister, son or daughter be omitted in sections 129, 207, 211 & 212 restoring the provisions as they stand in the British Code.

Seconded by Mr. Bensley.

Mr. Krishnaswamy Rao.—I oppose the motion. As no previous notice of this amendment was given, I have not brought the authorities in support of the addition made by the Select Committee. I believe that several European Codes contain a similar provision. We can hardly find a single case of conviction for harbouring a relative accused or convicted of an offence. I entertain no doubt that no Court will award more than a nominal punishment in cases of harbouring a relative. Within the last 12 years I have been in Travancore, I have not come across a single case in which a relative was accused of harbouring an offender. No mother ought to be prosecuted for giving shelter to her son or daughter. A mother's attachment to her children is so strong that we could never expect her to act the part of a detective against her own offspring. I do not think that the exemption in the British Penal Code which restricts the privilege of harbouring to husband and wife, is solely based on the legal fiction that husband and wife are one and the same person. That fiction is not recognised by the Evidence Act which requires a husband or wife to give evidence even in murder cases against one another under a heavy penalty for bearing false testimony.

After some further discussion, the motion was put to the Council and carried by majority.

Section 288.

President.—Another section about the operation of which I have misgivings is 288. I may, in the first place, observe the section is new. It is not in the British Code. I should think this would work great hardship especially in an agricultural country like Travancore. While no palpable gain is likely to follow, it would put into the hands of petty servants the means of oppressing the poor. Further, who is the man to be punished? The person in whose possession the animal is—evidently, the owner is meant. What a scope this would give for disgracing respectable people who may not know anything about their cattle—often placed in distant estates.

If the person in whose charge the animal is, i. e., the cowherd or the shepherd is intended, considerable difficulty in securing such servants will be the result. Further, it has to be noted, these may often change and in most cases it will be found that the animals for the purposes of the section have not continued in the possession of the same individual.

Mr. Nagam Aiya.—Who is meant to be punished, the owner or the cowherd? The owner should not, of course, be punished. He may have his cattle far away.

President.—Exactly so. Let anything be done with the cattle. Why harass the men? We are establishing cattle-pounds in every important centre and they should afford sufficient protection.

Mr. Rama Vurma.—I am for omitting the section.

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Mr. Ramanatha Rao.—I am decidedly in favour of the amendment proposed by the Select Committee. The people here are so negligent about their cattle. They let them stray freely to the great inconvenience of their neighbours. The new section is highly necessary.

President.—Is the Penal Code the place for such provisions?

Mr. Nagam Aiya.—I think the proper place is the Cattle Trespass Regulation. Any such additional provision may, if necessary, be put in there. I would therefore move that section 288 be omitted.

Mr. Thanu Pillai.—I second it. There is, no doubt, much to be said for the view taken by my friend Mr. Ramanatha Rao. Cattle nuisance is a veritable and a growing evil and some remedy is indeed needed. But I think the Cattle Trespass Regulation and *not* the Penal Code is the place for providing the necessary remedy. The section besides is wanting in precision. The expression 'whoever is in possession' seems to admit of more than one interpretation. Some of my learned colleagues think it means or at any rate includes the owner. If so, all the practical hardships I referred to under section 147 are more or less repeated here. Owners are very often away from their cattle especially those used for agricultural purposes. There is certainly considerable scope for hard prosecutions. Again, if the cowherds and shepherds are to be punished, we shall find it extremely difficult to get their services and this is a contingency not to be despised in places like Nanjanad where you may see every day large droves of cattle tended by one or two keepers. Where there is such a large number, straying is unavoidable and unless one is prepared to indefinitely increase the number of keepers incessant prosecutions would be the consequence. The judicious extension and working of the cattle-pound system may I think prove a sufficient check. If not, some penal provision, with the necessary safeguards, may be introduced in the Cattle Trespass Regulation.

Mr. Prince.—It is the duty of the owner to provide a sufficient number of men. The poor boys ought not to be punished.

Mr. Krishnaswamy Rao.—I oppose the motion. In the speech I delivered at the last meeting of the Council, I have fully given the reasons which induced the Select Committee to introduce this section. The main principle of this section, i. e. the liability of possessors of animals for nuisance committed by the animals in their charge, is not new. It is affirmed by section 287 of the Bill which corresponds with section 289 of the Indian Penal Code.

The amendment was put to the Council and carried by majority.

Sections 376 and 501.

Mr. Krishnaswamy Rao.—I beg to move that the Explanations appended to the 'Exception' under section 376 and to section 501 be omitted. My friend, Mr. Thanu Pillai, introduced at the last meeting of the Council a Bill to declare the Marumakkathayom Sambandhoms as valid marriages. This Council unanimously affirmed the principle of that Bill. It is likely to become law about the time the present Code comes into force. It will serve the purpose for which these Explanations were added. Their retention is therefore unnecessary.

Mr. Rama Varma.—Yes; I think these may be omitted. The principle of the Bill has been unanimously affirmed. I therefore second it.

Mr. Thanu Pillai.—I may be permitted to observe that I feel sanguine that the measure will ere long become law having secured, as observed by the learned Chief Justice, the unanimous approval of the Council; and as the present motion to drop these additions is based on that consideration I have no objection.

Mr. Rama Varma.—I fully endorse Mr. Thanu Pillai's views. I for one would certainly not permit the omission of the Explanation except on this understanding.

President.—The understanding is, of course, clear.

The motion was put to the Council and carried.

Section 376, Exception.

Mr. Krishnaswamy Rao.—I beg to move that the word "ten" be substituted for "twelve" in the Exception to section 376 of the Bill. The substitution simply leaves undisturbed the law as it now stands, as between a husband and wife. In the Bill as originally introduced by me, no proposal for raising the present age-limit was made. My reasons for not disturbing the present limit, as stated in my introductory speech, were these:—"When the husband commits rape on his wife, the persons who

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could be expected to complain of it are the near relations of the wife. The indissoluble character of the marriage tie among the Hindus, the damaging effect of the conviction on the prospects of the offender in finding any honorable employment and the life-long animosities which the preferring of the charge would certainly create between the husband and wife would naturally induce relatives to maintain silence and to thwart the attempts of the Police to bring the offence to light. The practical effect of the amendment of the 'Exception' on the lines of the 'Age of Consent Act' would therefore be an intolerable annoyance resulting from an inquisitorial Police investigation without any commensurate advantage." In the Select Committee however, I consented to the proposal to amend the Exception on the lines of the "Age of Consent" Act, *on account of its educative effect.* Since the Bill, as amended by the Select Committee, was published, it has been brought to my notice that in this country, girls often attain puberty before 12 years, and among the higher classes of Hindus, the ceremony known as "Garbhadhanom" is, as a matter of religious duty, performed within 16 days from the date on which the girl attains age, and that the insertion of the word "twelve" in the Exception therefore amounts to a direct interference with an important religious and domestic act. There are still a very large number of orthodox Hindus who consider it to be an indispensable religious duty to perform this ceremony on a girl attaining maturity between 10 and 12 years of age. As I have already explained, the chances of a successful prosecution of a husband for rape on his wife are very remote. We had no cases here in which the present law was found to be insufficient to protect girl-wives against the brutality of their husbands. There is a growing tendency among all classes to postpone the consummation of marriage far beyond twelve years. This is due, undoubtedly, to the progress of education and to the spread of the knowledge of hygeian principles. On further consideration, I think that we may trust to the mild influence of the school master and the medical practitioner to secure the educative effect which the raising of the present age-limit contemplates. I would therefore leave the present law undisturbed, in so far as it relates to the husband and wife, by restoring "ten" to its original place in the Exception to this section and removing "twelve" from the second line.

Mr. Nagam Aiya.—Yes; the question involves religious and social considerations. I second it.

Mr. Ramanatha Rao.—I must beg leave to differ from the learned mover of the amendment on this important section. It was only after full consideration and discussion in the Select Committee, the principle of the Age of Consent Act was adopted and "twelve" was substituted for "ten" throughout section 376. Now it is proposed that in the Exception referring to the case of a husband, "ten" should be substituted as before. It is principally to restrain a husband that the alteration was deemed necessary. The possibility of any person other than a husband committing rape on a girl of ten years of age or below is very remote; and so we may well eliminate such cases practically from our consideration. The Age of Consent Bill was so thoroughly and exhaustively discussed by all classes and sections of people inhabiting the length and breadth of India that it would be simply useless and taking up the time of the Council for me to go over the several arguments for and against the measure so ably set forth by eminent men. It was only after a mature deliberation of every argument and consideration urged that the British Indian Legislature raised the age to twelve. The Hindu subjects of this State whom this change would mainly affect cannot be said to differ in their religious and social observances from their brethren on the other side of the Ghauts. The observances of the orthodox Namboodry Brahmin go much farther. Among that class of Brahmins, marriage i. e. the betrothal as well as the consummation often take place after the age of twelve and much later. Most unfortunately, the Nair and also the Syrian Christian community do not follow the high example set by the Namboodry in this matter so much affecting their physical well-being, though the religious consideration is totally absent in their case. Then the religious ceremony known as the "Garbhadhanom" ceremony affects the Brahmin section of the community who have migrated from beyond the Ghauts and settled here. Even among them that ceremony is performed on the occasion of the consummation of the marriage and *not necessarily* within a fortnight after puberty. The orthodox community of Brahmins whom the proposed alteration of the law would affect is so limited in number that we need hardly take into our consideration their case. Orthodoxy with regard to various other essential religious observances has given way. The Shastras strictly enjoin the performance, in the eighth year, of the Upanianom (initiatory thread) ceremony and subsequent learning of the Vedas to constitute a born Brahmin lad a Dwija (twice-born) or Brahmin, and

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yet, now-a-days, the thread ceremony as a rule is performed much later. In consideration of the real or supposed feelings of a very small section of the people of this State, are we to sacrifice a provision of law which is unqualifiedly admitted on all hands to be absolutely necessary in the best interests of the people at large? It is conceded that the influence of the school master and the medical practitioner is already felt in this direction. If so, it only strengthens my position that it is time for the Legislature to step in and complete the work. In enacting a penal clause of this nature we are not so much to look for so many prosecutions on cases of conviction but to the "educative influence" rather to the wholesome deterrent effect it would have on the majority of the would-be offenders. In conclusion I beg to say that you should not lose sight of this important fact that though the provision under discussion as altered by the Select Committee has been before the public several months, not a *single* representation objecting to the raising of the age to twelve has been received by the Secretary to the Council, not even from any member of the orthodox community.

Mr. Rama Vurma.—I am quite at one with Mr. Ramanatha Rao. I lay much stress upon the educative effect of the provision.

Mr. Prince.—As one of the members of the Select Committee who adopted the age of "12" instead of "10" with respect to cases coming within the Exception to this section it may be necessary that I should say a few words in defence of the position I now take up in supporting the amendment. When I sat as a member of the Select Committee I was not aware that the ceremony of "Garbhadhanom" imposed among the orthodox section of the Hindu community a religious obligation (in all cases of marriage before the age of 12) of consummating the marriage within 16 days of the attainment of puberty by the wife even in cases where the girl attained puberty before the age of 12.

While still being of opinion that the raising of the age of consent to 12 would materially conduce to the moral progress of the community, yet I am of opinion that in a Native State we should be very slow to legislate against the prevailing religious feeling or sentiment which considers it a sin to disregard such religious obligations and the more so where it is not shewn that the practice, so far as this State is concerned, (and for whose people we are legislating) is one calling for special legislative enactment to cure any existing evil and where the cases must be few and far between in which prosecutions for rape by a husband on a girl-wife are likely to arise. In the absence of a necessity for legislation, I think the wiser course where such legislation is likely to interfere to a certain extent with one's religious feelings will be not to extend the age at present. We are not bound to follow British Indian Legislation in all things, more especially, in matters of this kind, however wise and fitting they may be to the circumstances existing there. From enquiries I learn that, among the more educated of the orthodox Hindu community, as my learned friend has observed, the present tendency is to postpone the performance of this religious obligation till after the age of 12. If this be so, the result which we would attain by legislation, the people will themselves indirectly work out and thus avoid legislation and it must be obvious that this will be the better course, at least for the present.

Mr. Bensley.—I have heard differences of opinion expressed by Brahmin gentlemen as to whether it is necessary upon religious grounds to lower the age from twelve to ten and therefore I am prepared to support the retention of the section as passed by the Select Committee.

President.—The proposed amendment saves a good deal of needless vexation to the people and I may add, embarrassment to Government. The Age of Consent Act is intended for a large Empire and the habits and interests of various classes and such considerations must have been taken into account and in fact, as we all know, the necessity for the law was forced on the attention of the British Government by outrages of a kind we have never heard of in this country all the time the 'ten' years' limit has been in operation.

The motion was put to the Council and carried by majority.

It was then resolved that the Bill as amended be read again on a future day of which notice shall be given.

The Council adjourned at 3-45' P. M.

SHUNGRASOOBYER
President.

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